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HOUSE BILL NO. 800

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 56-466.1 of the Code of Virginia, relating to public service companies; pole attachments; cable television systems and telecommunications service providers.

Patrons—Herring, Austin, Hayes, Lopez, Clark, Henson, Kilgore, Knight, Leftwich, Maldonado, Martinez, Shin, Wiley and Wyatt

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:**1. That § 56-466.1 of the Code of Virginia is amended and reenacted as follows:****§ 56-466.1. Pole attachments; cable television systems and telecommunications service providers.**

A. As used in this section:

"Cable television system" means any system licensed, franchised or certificated pursuant to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

"Electric cooperative" means a utility services cooperative formed under or subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1.

"FCC" means the Federal Communications Commission.

"National electrical safety standards" means standards provided in the National Electrical Safety Code.

"Pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility.

"Public utility" has the same meaning ascribed thereto in § 56-232.

"Rearrangement" means work ~~performed~~ *necessitated solely by and* at the request of a telecommunications service provider or cable television system to, on, or in an existing pole, duct, conduit, right-of-way, or similar facility owned or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include replacement, *necessitated solely by and* at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

"Telecommunications service provider" means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

B. Upon request by a telecommunications service provider or cable television system to a public utility, both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system. *The terms of such contract shall comply with the orders, rules, and policies of the FCC governing attachments to utility poles, including as provided in 47 C.F.R. § 1.1401 et seq. but excluding FCC rules regarding recurring pole attachment rates or resolutions of disputes by the FCC or its staff.*

C. After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable *nondiscriminatory* terms and conditions and the payment of *just and* reasonable annual charges and the *reasonable, actual* cost of any required rearrangement, the attachment of any wire, cable, facility, or apparatus to its poles or pedestals, or the placement of any wire, cable, facility, or apparatus in conduit or duct space owned or controlled by it, by such telecommunications service provider or cable television system that is authorized by law, to construct and maintain the attachment, provided that the attachment does not interfere, obstruct, or delay the service and operation of the public utility or create a safety hazard.

D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service may deny access by a telecommunications service provider or cable television system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,

58 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons
59 of safety, reliability, or generally applicable engineering principles. *Insufficient capacity shall not exist if*
60 *an arrangement can be accomplished consistent with national electrical safety standards currently in*
61 *effect or in effect at the time such pole line or other part was constructed.*

62 E. This section shall not apply to any pole attachments *or any public utility* regulated pursuant to 47
63 U.S.C. § 224.

64 F. *A public utility shall establish and adhere to pole attachment practices and procedures that*
65 *comply with FCC rules and policies governing attachments to utility poles, as provided in FCC orders*
66 *and 47 C.F.R. § 1.1401 et seq. but excluding FCC rules regarding recurring pole attachment rates or*
67 *resolutions of disputes by the FCC or its staff.*

68 G. The Commission is authorized to *enforce the provisions of subsections F and H and to determine*
69 *just and reasonable rates, and terms and conditions of service, excluding safety and debt collection, for*
70 *attachments to electric cooperative poles by telecommunications service providers or cable television*
71 *systems if, following good faith negotiations to do so, the parties cannot reach agreement thereon;*
72 *however, the Commission shall not determine rates or terms and conditions for any existing agreement*
73 *until it expires or is terminated pursuant to its own terms. The terms of an expired or terminated*
74 *agreement shall continue to govern while good faith negotiations or Commission review pursuant to this*
75 *section are pending. Such determinations shall be made in accordance with the following:*

76 1. Just and reasonable pole attachment rates and terms and conditions of service to be determined by
77 the Commission shall include, without limitation, rearrangement and make-ready costs, pole replacement
78 costs, and all other costs directly related to pole attachments and maintenance, replacement, and
79 inspection of poles or pole attachments, and right of way maintenance essential to pole attachments,
80 provided, however, that cost recovery for rearrangement, make-ready, and pole replacement ~~shall be~~
81 *addressed in terms and conditions; and shall not also be included in annual rental rates;*

82 2. In determining pole attachment rates, the Commission shall consider (i) any effect of such rates on
83 the deployment or utilization, or both, of broadband and other telecommunications services, (ii) the
84 interests of electric cooperatives' members, and (iii) the overall public interest;

85 3. The Commission may develop and utilize alternative forms of dispute resolution for purposes of
86 addressing disputes (i) arising under this subsection and (ii) falling within the scope of the Commission's
87 authority established hereunder;

88 4. *The Commission shall resolve disputes (i) arising under subsections F and H within 120 days and*
89 *(ii) concerning all other matters arising under this section within 90 days;*

90 5. The Commission is authorized to assess reasonable application fees to recover appropriate
91 Commission costs of proceedings arising under this subsection; and

92 ~~5.~~ 6. The Commission is authorized to develop, if necessary, rules and regulations, including a
93 definition of good faith negotiations, to implement this section.

94 H. *Notwithstanding any other provision of law, a public utility subject to this section shall not*
95 *apportion to a telecommunications service provider or cable television system the cost of replacing a*
96 *pole that, at the time when such telecommunications service provider or cable television system requests*
97 *to attach to such pole, fails to meet either the current national electrical safety standards or the public*
98 *utility's current specifications. However, such public utility may apportion to a telecommunications*
99 *service provider or cable television system the incremental cost of a taller or stronger pole that is*
100 *necessitated solely by the new facilities of such telecommunications service provider or cable television*
101 *system.*